

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

<p>App. Ser. No.: 10/806,830</p> <p>Appellant(s): Nishikawa et al.</p> <p>Filing Date: March 23, 2004</p> <p>Title: Interactive Program Guide with Preferred Items List Apparatus and Method</p> <p>Examiner: Joshua D. Taylor</p> <p>Art Unit: 2426</p> <p>Customer No.: 37123</p> <p>Confirm. No.: 4246</p> <p>Attorney Docket No.: 81233 7114</p>	<p><b>Certificate of Transmission/Mailing/Express Mailing</b></p> <p>Facsimile Transmission number: (571) 273-8300; or, if applicable, "Express Mail" mailing label number: _____</p> <p>I hereby certify that this correspondence is being facsimile transmitted to the USPTO, under 37 C.F.R. § 1.8, electronically transmitted via the USPTO electronic filing system, under 37 C.F.R. § 1.6(a)(4), deposited with the United States Postal Service with sufficient postage as first class mail in an envelope, under 37 C.F.R. § 1.8, or deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service, under 37 C.F.R. § 1.10, on the below indicated date and is addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.</p> <p>Typed/Printed Name of Person Transmitting, Mailing, or Express- Mailing Correspondence: <u>May Lin Deftan</u></p> <p>Signature: <u>May Lin Deftan</u></p> <p>Date of Transmission/Deposit: <u>4/8/2010</u></p>
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**APPEAL BRIEF**  
**UNDER 35 U.S.C. § 143(A), 37 C.F.R. § 41.37**

To the Board:

This document is an Appeal Brief in support of the Notice of Appeal, filed on February 9, 2010, under 35 U.S.C. § 143(A) and 37 C.F.R. § 41.37.

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## **I. REAL PARTY IN INTEREST**

The real parties in interest are the Assignees of the subject matter in the above-referenced patent application, Sony Corporation, a Japanese corporation, 7-35 Kitashinagawa, 6-Chome, Shinagawa-Ku, Tokyo, Japan, and Sony Electronics, Inc., a Delaware corporation, 1 Sony Drive, Park Ridge, New Jersey 07656.

## **II. RELATED APPEALS AND INTERFERENCES**

On information and belief, no interferences are pending; however, a related appeal has been filed in U.S. Patent Application Serial No. 10/806,832 (Applicants: Nishikawa et al.), entitled "Filter Criteria and Results Display Apparatus and Method," on July 1, 2009.

### **III. STATUS OF CLAIMS**

The present application has been originally filed with Claims 1-14 on March 23, 2004. A Response to a Non-Final Office Action, dated November 15, 2007, has been filed on February 15, 2008, wherein the Claims have not been amended. An Amendment in a Response to a Non-Final Office Action, dated June 2, 2008, has been filed on September 5, 2008, wherein Claims 1, 2, and 10 have been amended, Claims 3-7 have been canceled, without prejudice, and Claims 15 and 16 have been newly added. An Amendment in a Response to a Final Office Action, dated November 26, 2008, has been filed on January 26, 2009, wherein Claims 1, 10, 15, and 16 have been amended, and wherein Claims 13 and 14 have been canceled, without prejudice.

Subsequently, a Request for Continued Examination, in response to an Advisory Action, dated February 20, 2009, has been filed on February 26, 2009. A Response to a Non-Final Office Action, dated April 2, 2009, has been filed on June 26, 2009, wherein the Claims have not been further amended. Claims 1, 2, 8-12, 15, and 16 have been finally rejected in the Final Office Action, dated November 9, 2009. An Amendment in a Response to the Final Office Action, dated November 9, 2009, has been filed on January 11, 2010, wherein Claims 11, 10, 15, and 16 have been further amended, and wherein Claims 17-20 have been newly added, i.e., after final rejection. Accordingly, Claims 1, 2, 8-12, 15, and 16, having been twice-rejected and as reflected in both the June 26, 2009, Response and in the February 9, 2010, Notice of Appeal, are the subject of this Appeal. The Claims that are subject of this Appeal are attached hereto as Appendix A.

#### **IV. STATUS OF AMENDMENTS**

An amendment (Amendment E) has been filed subsequent to the final rejection on January 11, 2010, and in Response to the November 9, 2009, Final Office Action.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1, 10, 15, and 16 are independent claims in this Appeal. The subject matter of independent Claims 1 and 15 relates to the Appellant's method of using an interactive programming guide by at least one user on a given audio/visual device. The subject matter of independent Claim 10 and 16 relates to the Appellant's method of providing an interactive programming guide.

Independent Claim 1 addresses a method of using an interactive program guide by at least one user on a given audio/visual device, comprising the steps of: providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs (Present Application, Specification, ¶¶ 22 and 32); displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs (Present Application, Specification, ¶¶ 22 and 33); providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5); detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program (Present Application, Specification, ¶ 22); when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program (Present Application, Specification, ¶ 22); when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action (Present Application, Specification, ¶ 22); when a user takes an action with respect to the preliminarily selected audio/visual program, which action does not comprise either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than

the first and the second predetermined action (Present Application, Specification, ¶ 22); and automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time (Present Application, Specification, ¶ 24), wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media (Present Application, Specification, ¶ 28), wherein the plurality of cascading filters simultaneously considers content across the plurality of media (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 8, ¶ 5), wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items (Present Application, Specification, ¶¶ 22, 24, and 39), wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program (Present Application, Specification, ¶¶ 22 and 40), and wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items (Present Application, Specification, ¶¶ 22 and 41). In addition, the method of independent Claim 1 is also generally illustrated in Figures 1-6. Accordingly, Claims 2, 8, and 9 ultimately depend from Claim 1 as their base claim.

Independent Claim 10 addresses a method of providing an interactive programming guide, comprising the steps of: providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content (Present Application, Specification, ¶¶ 22 and 32); providing an updatable list of preferred items of audio/visual content (Present Application, Specification, ¶¶ 23 and 24); displaying an interactive programming guide comprising at least one of the characterizing descriptors (Present Application, Specification, ¶¶ 22 and 33); providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5); providing an area of visual focus on a particular displayed one of the characterizing



descriptors (Present Application, Specification, ¶ 36); in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content (Present Application, Specification, ¶¶ 37 and 38); in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors (Present Application, Specification, ¶ 40); in response to a third signal that is different from both the first signal and the second signal, displaying the updatable list of preferred items of audio/visual content (Present Application, Specification, ¶ 41); and automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time (Present Application, Specification, ¶ 24), wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media (Present Application, Specification, ¶ 28), and wherein the plurality of cascading filters simultaneously considers content across the plurality of media (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 8, ¶ 5). In addition, the method of independent Claim 10 is also generally illustrated in Figures 1-6. Accordingly, Claims 11 and 12 ultimately depend from Claim 10 as their base claim.

Independent Claim 15 addresses a method of using an interactive program guide, comprising the steps of: providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs (Present Application, Specification, ¶¶ 22 and 32); displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs (Present Application, Specification, ¶¶ 22 and 33); providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5); detecting preliminary selection of a particular

one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program (Present Application, Specification, ¶ 22); determining when the user selects the preliminarily selected audio/visual program by detecting when the user asserts a selection action at a time when a characterizing descriptor as corresponds to the preliminarily selected audio/visual program occupies, at least in part, a same portion of a display as a predetermined area of visual focus (Present Application, Specification, ¶ 40); when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program (Present Application, Specification, ¶ 40); when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action (Present Application, Specification, ¶ 40); when a user takes an action with respect to the preliminarily selected audio/visual program, the action not comprising either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action (Present Application, Specification, ¶ 41); and automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time (Present Application, Specification, ¶ 24), wherein the characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs comprise at least one element selected from a group consisting essentially of a programming network identifier, a broadcast starting time, a description of audio/visual content as corresponds to the audio/visual program, and an audio/visual program media source (Present Application, Specification, ¶ 32), wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media (Present Application, Specification, ¶ 28), wherein the plurality of cascading filters simultaneously considers content across the plurality of media (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 8, ¶ 5), wherein the step of automatically taking a first

predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items (Present Application, Specification, ¶¶ 22, 24, and 39), wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program (Present Application, Specification, ¶¶ 22 and 40), wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items (Present Application, Specification, ¶¶ 22 and 41), and wherein the step of detecting preliminary selection of a particular one of the discrete selectable audio/visual programs further comprises detecting at least a predetermined relationship between a present position of one of the characterizing descriptors as corresponds to the particular one of the discrete selectable audio/visual programs and an area of visual focus (Present Application, Specification, ¶¶ 36, 37, and 38). In addition, the method of independent Claim 15 is also generally illustrated in Figures 1-6.

Independent Claim 16 addresses a method of providing an interactive programming guide, comprising: providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content (Present Application, Specification, ¶¶ 22 and 32); providing an updatable list of preferred items of audio/visual content (Present Application, Specification, ¶¶ 23 and 24); displaying an interactive programming guide comprising at least one of the characterizing descriptors (Present Application, Specification, ¶¶ 22 and 33); providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5); providing an area of visual focus on a particular displayed one of the characterizing descriptors (Present Application, Specification, ¶¶ 36 and 37); in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content (Present Application, Specification, ¶ 40); in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors (Present Application, Specification, ¶ 40); in response to a third signal that is different from both the first signal and the second signal,

displaying the updatable list of preferred items of audio/visual content (Present Application, Specification, ¶ 41); receiving at least one of the first signal, the second signal, and the third signal from a remote control device (Present Application, Specification, ¶ 31); and automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time (Present Application, Specification, ¶ 24), wherein the response to the third signal further comprises not displaying characterizing descriptors as correspond to items of audio/visual content that are not on the list of preferred items of audio/visual content (Present Application, Specification, ¶ 46), wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media (Present Application, Specification, ¶ 28), and wherein the plurality of cascading filters simultaneously considers content across the plurality of media (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 8, ¶ 5). In addition, the method of independent Claim 16 is also generally illustrated in Figures 1-6.

## **VI. GROUND(S) OF REJECTION TO BE REVIEWED ON APPEAL**

Whether Claims 1-2, 8-12, 15, and 16 are unpatentable, under 35 U.S.C. § 103(a), over Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696)

## **VII. ARGUMENT**

**Issue: Whether Claims 1-2, 8-12, 15, and 16 are unpatentable, under 35 U.S.C. § 103(a), over Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696)**

### **A. Specific Nature of the Rejection**

Claims 1, 2, 8-12, 15, and 16 have been rejected, under 35 U.S.C. § 103(a), as being unpatentable over Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696) on the grounds that Ellis discloses “an interactive program guide,” that Robarts discloses “detecting a preliminary selection ...,” that Hassell discloses “cascading windows,” and that Westberg discloses “monitoring a user’s activity.” The Appellants respectfully traverse these grounds for rejection on this basis. The Appellants further respectfully submit that the Examiner has not sustained the obviousness rejection of Claims 1, 2, 8-12, 15, and 16 on the grounds of the cited references, because the Examiner has not provided sufficient objective evidence or sufficient rationale therefor.

### **B. Analysis of the patentable distinctions between the present invention and Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696)**

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references.

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 1, as amended on June 26, 2009, from Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696) are as follows:

- a. “providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;”
- b. “displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;”
- c. **“providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;”**
- d. “detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;”
- e. “when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;”
- f. “when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action;”
- g. “when a user takes an action with respect to the preliminarily selected audio/visual program, which action does not comprise either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and”
- h. **“automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of**

**discrete selectable items of audio/visual content for greater than a predetermined length of time,”**

- i. **“wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media,”**
- j. **“wherein the plurality of cascading filters simultaneously considers content across the plurality of media,”**
- k. “wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,”
- l. “wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program, and”
- m. “wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items.” [Emphasis added.]

Accordingly, Claims 2, 8, and 9, subsuming the combination of elements and limitations of independent Claim 1 by dependency, are also believed to be patentably distinct over Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 10, as amended on June 26, 2009, from Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696) are as follows:

- a. “providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;”
- b. “providing an updatable list of preferred items of audio/visual content;”
- c. “displaying an interactive programming guide comprising at least one of the characterizing descriptors;”
- d. **“providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of**



**cascading filters being customizable for each at least one user;”**

- e. “providing an area of visual focus on a particular displayed one of the characterizing descriptors;”
- f. “in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;”
- g. “in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;”
- h. “in response to a third signal that is different from both the first signal and the second signal, displaying the updatable list of preferred items of audio/visual content; and”
- i. **“automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,”**
- j. **“wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media, and”**
- k. **“wherein the plurality of cascading filters simultaneously considers content across the plurality of media.”** [Emphasis added.]

Accordingly, Claims 11 and 12, subsuming the combination of elements and limitations of independent Claim 10 by dependency, are also believed to be patentably distinct over Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 15, as amended on June 26, 2009, from Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696) are as follows:

- a. “providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;”
- b. “displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;”
- c. **“providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;”**
- d. “detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;”
- e. “determining when the user selects the preliminarily selected audio/visual program by detecting when the user asserts a selection action at a time when a characterizing descriptor as corresponds to the preliminarily selected audio/visual program occupies, at least in part, a same portion of a display as a predetermined area of visual focus;”
- f. “when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;”
- g. “when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action;”
- h. “when a user takes an action with respect to the preliminarily selected audio/visual program, the action not comprising either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and”
- i. **“automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of**

**discrete selectable items of audio/visual content for greater than a predetermined length of time,”**

- j. “wherein the characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs comprise at least one element selected from a group consisting essentially of a programming network identifier, a broadcast starting time, a description of audio/visual content as corresponds to the audio/visual program, and an audio/visual program media source,”
- k. **“wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media,”**
- l. **“wherein the plurality of cascading filters simultaneously considers content across the plurality of media,”**
- m. “wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,”
- n. “wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program,”
- o. “wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items, and”
- p. “wherein the step of detecting preliminary selection of a particular one of the discrete selectable audio/visual programs further comprises detecting at least a predetermined relationship between a present position of one of the characterizing descriptors as corresponds to the particular one of the discrete selectable audio/visual programs and an area of visual focus.” [Emphasis added.]

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 16, as amended on June 26, 2009, from Ellis et al. (US 2004/0117831), in view of Robarts et al. (US 2005/0278741), and in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696) are as follows:

- a. “providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;”

- b. “providing an updatable list of preferred items of audio/visual content;”
- c. “displaying an interactive programming guide comprising at least one of the characterizing descriptors;”
- d. **“providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;”**
- e. “providing an area of visual focus on a particular displayed one of the characterizing descriptors;”
- f. “in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;”
- g. “in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;”
- h. “in response to a third signal that is different from both the first signal and the second signal, displaying the updatable list of preferred items of audio/visual content;”
- i. “receiving at least one of the first signal, the second signal, and the third signal from a remote control device; and”
- j. **“automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,”**
- k. “wherein the response to the third signal further comprises not displaying characterizing descriptors as correspond to items of audio/visual content that are not on the list of preferred items of audio/visual content;”
- l. **“wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media, and”**
- m. **“wherein the plurality of cascading filters simultaneously considers content across the plurality of media. [Emphasis added.]”**

Analyzing the facts as to Claims 1, 2, 8-12, 15, and 16 in relation to the outstanding Issue, the Examiner concedes that “[t]he combined teaching of Ellis and Robarts does not disclose providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user, nor does it disclose wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media, wherein the plurality of cascading filters simultaneously considers content across the plurality of media” (November 9, 2009, Final Office Action, p. 4, l. 21 - p. 5, l. 4). The Examiner relies on Hassell for assertedly disclosing “that *windows* can be displayed in a *cascading fashion* (Figs 18A and 18B, paragraph [0118])” and “that the content in the *cascading windows* may be retrieved from a plurality of different feeds that are interspersed among a plurality of analog carriers (Fig. 24, paragraph [0128])” (November 9, 2009, Final Office Action, p. 5, ll. 5-9). The Appellants respectfully submit that the Examiner has not fully appreciated the distinction between the “cascading windows” of Hassell and the presently claimed “cascading filters.”

With respect to the primary cited reference, Ellis merely discloses “[a] system for providing interactive television program guide features and other features and information related to a specific user interest or programming category in niche hubs is provided. All of the television programming features provided by user television equipment that relate to a specific user interest or programming category may be accessed from the niche hub. For example, a movie [lover’s] niche hub may provide programming features such as television program listings for movies, video-on-demand listings for movies, pay-per-view listings for movies, web site links related to movies, movie-related merchandise, movie news groups, movie chat groups, movie e-mail clubs, movie contests, movie trivia questions, movie actor interviews, movie reviews, movie channel package ordering, etc. ....” (Abstract).

With respect to the secondary cited reference, Robarts merely discloses “[a]n electronic program guide (EPG) organizes and presents programming information to the viewer and allows for creation of queries to facilitate both simple and complex searches of the programming information. According to one aspect, the EPG is configured to automatically identify programs

that a viewer is likely to prefer. The EPG collects viewing preferences of a viewer and, based upon ... these viewing preferences, automatically develops queries for identifying programs that the viewer is likely to want to watch ....” (Abstract).

With respect to the tertiary cited reference, Hassell actually discloses:

[0118] **Cascading windows may be displayed, one partially covering the next**, for each feed of a particular content category (i.e. video, text/graphic update, etc.). For example, the **text/graphic update feeds** of the Business News Channel broadcast may be represented as those shown in FIG. 18A. **Windows 160, 162, 164, and 166 may be update windows that display text/graphic update feeds.** One possible manner in which this feature may be implemented is to have the first window in the cascading series display its respective feed, while the others are simply empty windows that may display a title along a viewable edge. If a user wishes to view another feed, then a highlight region, such as highlight region 168 may be moved among the windows until it is over the desired feed. The user may then press an enter key on the remote control to activate the highlighted feed. This is shown in FIG. 18B. Update window 162 was selected by the user. As a result, the feed associated with update window 162 was activated as shown in FIG. 18B. The previously activated window 160 may switch places in the cascade series with the newly activated window 162. If desired, the previously activated window may move back one position in the series, or may move to the back of the sequence, or may be removed from the series. Alternatively, the **windows making up the cascading structure that are partially visible may display the content that is visible in the visible portions of the partially visible windows.** In the case of multiple video windows, this feature may require additional MPEG decoders in the set-top box. Any such implementation or any other suitable implementation may be used. If desired, user control settings may dictate which implementation is used.

[0119] An initial display of the cascading series of windows may be based on a default setting. Otherwise, the user may choose which feeds to include in the cascade by, for example, **highlighting any of the cascade windows** and pressing a setup button on the remote control. This may bring up an overlay or a window in a black area or another cascade window that may display a listing of available feeds corresponding to the cascade series category. This listing is illustrated in FIG. 19. **A user may select feeds to include in the cascade series by selecting check-boxes corresponding to individual feeds (or groups of feeds).** A maximum number of feeds that may be selected may be implemented. This would alleviate the problem of having too many windows on the screen. If desired, however, such a limit need not exist.

[0120] The cascading structure of the feeds as shown in FIGS. 18A and 18B may remain constant. If desired, however, **the windows may be separated from one another and moved about and placed anywhere on the display.** If desired, each window may display its corresponding feed simultaneously.

[0121] A cascading structure may similarly be used for a collection of video feeds, a collection of tickers, or a collection of any suitable windows. If desired, such individual cascading structures need not contain only windows from the same category (e.g. video windows, tickers, etc.), but may contain a variety of different elements.

[0122] Channel icons, efficient use of black areas, overlaying listings windows, **cascading feed windows**, and other features presented thus far are merely illustrative ways in which a user may be presented with choice of feeds to activate. Any other suitable means may be used. This includes, but is not limited to, shrinking part of the display and inserting a content listing into the empty area, having a **permanently displayed feed window** with a passive or interactive content listing

that may include sub-listings, or having a full-screen content listing appear when **the user selects a particular item from the display screen**, or by performing a particular physical act, such as pressing a listing button on a remote control. These and other embodiments may be used consistently or may be used in combination with one another.

...

[0128] The **content of each window in the display screen may be retrieved** from a dedicated feed or may be retrieved from a combination of different feeds. If desired, the content may be retrieved only from the current analog carrier tuned to. If desired, content may be retrieved from a plurality of feeds that are interspersed among a plurality of analog carriers. This may require additional tuners in the set-top box since each tuner can tune to only one broadcast channel at a time. This concept is more generally illustrated in FIG. 24. Analog carrier 210 and analog carrier 208 each carry a set of digital television feeds. **Digital television feed 212 and digital television feed 214 of analog carrier 210 may be simultaneously displayed** with digital feed 216 of analog carrier 208 **on display screen 218**. This may require one tuner 220 to tune to analog carrier 210 and a separate tuner 222 to tune to analog carrier 208. If desired, additional analog carriers' digital feeds may be added to display screen 218 by adding more tuners. If desired, a time-multiplexing operation may be implemented, whereby one tuner, or a relatively small number of tuners, may be switched between different analog carriers (preferably, at a high speed), allowing the retrieval of pieces of data from each analog carrier at the time a tuner is tuned to each particular analog carrier. With increased switching speeds, this implementation may simulate a system that uses a relatively large number of tuners.

With respect to the quaternary cited reference, Westberg merely discloses “[a]n interactive television program guide application is provided that queries a user regarding the user's interest in television programs and suggests television programs to the user based the user's responses. The interactive television program guide application identifies a television program that is potentially of interest to the user. The interactive television program guide application then queries the user regarding the user's interest using questions that are formulated based on attributes associated with the identified television program. Using the user's responses to the questions, the interactive television program guide application identifies and suggests one or more television programs to the user.” (Abstract).

In contrast to the cited art, the present invention methods each involve the following salient feature, *inter alia*: “providing a plurality of ***cascading filters*** for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of ***cascading filters*** being customizable for each at least one user[,]” “wherein the plurality of ***cascading filters simultaneously considers content across the plurality of media***,” and “***automatically adding information corresponding to a particular one of the plurality of discrete selectable items*** of audio/visual content to the updatable list of preferred items of

audio/visual content *when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time[.]*” By implementing a plurality of **cascading filters**, the present invention provides **an automatic filtration of content across a plurality of media**, wherein the cascading filters are either predefined or user-defined for each user, and wherein the cascading filters are smart filters with enhanced suggestion engines that provide suggestions/recommendations based on at least one factor, such as the nature of the content, the uniqueness of the content, the frequency of the content, e.g., repeating event taking priority over a singular event, a viewer identification, e.g., as to genre, actor, time, channel, keyword, location, and predetermined customized user-defined keywords (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5), thereby **eliminating the need for manually checking boxes on the display each time the user wants to make a selection as is required by Hassell** (Hassell, ¶¶ 118-121 and 128). Nowhere in the cited art can any teaching, suggestion, motivation, or other obviation be found for combining the foregoing claimed features.

The Examiner even concedes that the cascading windows of Hassell are **merely graphic in nature, i.e., a display**, and that any selection is being manually performed by the user in stating, “... it would **allow the user to compare all content** from all viewing sources **in order to select** the program most desirable to the user, and **to do so in a manner** that was **aesthetically pleasing** and understandable” [Emphasis added.] (November 9, 2009, Final Office Action, p. 5, ll. 11-13). The Appellants respectfully reiterate that the Hassell *windows* are not *filters*. Rather, the Hassell windows are merely a graphic design feature for displaying all feed results, without any actual filtration of the content (Ex. A and B). In essence, the user must manually indicate preferences to Hassell’s electronic program guide (Ex. C) while the present invention interactive programming guide foresees, and tells, the user what the user’s preferences are based on the user’s past behavior as well as any present behavior (Ex. D). The present invention cascading filters are smart filters having enhanced suggestion engines that allow the present interactive programming guide to achieve this very different end by providing an automatically generated updatable list of preferred items 31 (Ex. D).



As such, the Appellants respectfully submit that Ellis et al. (US 2004/0117831), even in view of Robarts et al. (US 2005/0278741), and even in further view of Hassell et al. (US 2004/0107439) and Westberg (US 2005/0102696), does not teach, suggest, motivate, or otherwise obviate, in any other manner, the combination of elements and limitations, *inter alia*, as respectively recited in herein amended independent Claims 1, 10, 15 and 16 of the present application, some of the combined salient features being indicated in boldface:

1. A method of using an interactive program guide, comprising the steps of:
  - providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;
  - displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;
  - providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;**
  - detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;
  - when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;
  - when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action;
  - when a user takes an action with respect to the preliminarily selected audio/visual program, which action does not comprise either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and
  - automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,**
  - wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media,**
  - wherein the plurality of cascading filters simultaneously considers content across the plurality of media,**
  - wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,
  - wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program, and
  - wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items. [emphasis added]
10. A method of providing an interactive programming guide, comprising the steps of:
  - providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;
  - providing an updatable list of preferred items of audio/visual content;

displaying an interactive programming guide comprising at least one of the characterizing descriptors;

**providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;**

providing an area of visual focus on a particular displayed one of the characterizing descriptors;

in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;

in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;

in response to a third signal that is different from both the first signal and the second signal, displaying the updatable list of preferred items of audio/visual content; and

**automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,**

**wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media, and**

**wherein the plurality of cascading filters simultaneously considers content across the plurality of media. [emphasis added]**

15. A method of using an interactive program guide, comprising the steps of:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;

displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;

**providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;**

detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;

determining when the user selects the preliminarily selected audio/visual program by detecting when the user asserts a selection action at a time when a characterizing descriptor as corresponds to the preliminarily selected audio/visual program occupies, at least in part, a same portion of a display as a predetermined area of visual focus;

when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;

when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action;

when a user takes an action with respect to the preliminarily selected audio/visual program, the action not comprising either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and

**automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,**

wherein the characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs comprise at least one element selected from a group consisting essentially of a programming network identifier, a broadcast starting time, a description of audio/visual content as corresponds to the audio/visual program, and an audio/visual program media source,

**wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media,**

**wherein the plurality of cascading filters simultaneously considers content across the plurality of media,**

wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,

wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program,

wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items, and

wherein the step of detecting preliminary selection of a particular one of the discrete selectable audio/visual programs further comprises detecting at least a predetermined relationship between a present position of one of the characterizing descriptors as corresponds to the particular one of the discrete selectable audio/visual programs and an area of visual focus. [emphasis added]

16. A method of providing an interactive programming guide, comprising:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;

providing an updatable list of preferred items of audio/visual content;

displaying an interactive programming guide comprising at least one of the characterizing descriptors;

**providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;**

providing an area of visual focus on a particular displayed one of the characterizing descriptors;

in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;

in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;

in response to a third signal that is different from both the first signal and the second signal, displaying the updatable list of preferred items of audio/visual content;

receiving at least one of the first signal, the second signal, and the third signal from a remote control device; and

**automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,**

wherein the response to the third signal further comprises not displaying characterizing descriptors as correspond to items of audio/visual content that are not on the list of preferred items of audio/visual content,

**wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media, and**

**wherein the plurality of cascading filters simultaneously considers content across the plurality of media. [emphasis added]**

Accordingly, Claims 2, 8, 9, 11, and 12 subsume the limitations of their respective base claims by dependency.

Further, the Appellants respectfully submit that the November 9, 2009, Final Office Action has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that an obviousness rejection may be proper in certain instances in light of *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, *KSR v. Teleflex* specifically holds that the proper objective framework for such an obviousness inquiry is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17):

"Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and *the level of ordinary skill in the pertinent art* resolved. [Emphasis added.]

Specifically, the Appellants respectfully submit that the Examiner has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the tertiary reference, Hassell, and presently claimed invention is that Hassell merely discloses a data *display* feature comprising "cascading windows" for consideration by the user (Hassell, ¶¶ 118-121 and 128), as discussed and shown *supra*. However, the present application claims a data *filtration* feature comprising "**cascading filters**" (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 3, ¶ 4; p. 8, ¶¶ 4-8; p. 10, ¶ 5) as well as the **plurality of cascading filters simultaneously considering content across the plurality of media** (Priority Document, U.S. Provisional Patent Application Serial No. 60/520,752, Specification, p. 8, ¶ 5). The November 9, 2009, Final Office Action fails to explain how Hassell's electronic program guide may be modified to support a **plurality of cascading filters** and to work for the intended purpose of **simultaneously considering content across the plurality of media by the plurality of cascading filters to accommodate the viewing needs of not only one user, but at least one user, inter alia**, i.e., ascertained the differences between the prior art and the claims at issue. The presently claimed plurality of **cascading filters** allows the

filtration across the plurality of media to be **automatically and simultaneously implemented via the claimed electronic program guide**, rather than manually by the user through a graphic display as taught by Hassell.

Furthermore, the Appellants respectfully submit that Examiner fails to resolve the level of ordinary skill in the art and has failed to show any evidence in the form of enabling details that one of ordinary skill would modify Hassell to apply to cascading filters, as proposed in the November 9, 2009, Office Action, other than by a blanket statement that a window display is tantamount to a filter. As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex*.

In addition, the Appellants respectfully submit that the rejection on this basis is actually grounded in impermissible hindsight reconstruction by piecing together a multiplicity of cited references, i.e., four references in the instant case, by using the Appellant's claimed invention as a roadmap. The Examiner has merely made a blanket statement that one of ordinary skill would combine the teachings of Ellis, Robarts, Hassell, and Westberg, without presenting any objective evidence thereof.

The relevant procedural section is MPEP § 2142 which provides that "... [in] view of all factual information, the examiner must then make a determination **whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.**" [Emphasis added.]

In the instant case, the Appellants respectfully submit that the Examiner has pieced together elements from the four cited references to arrive at the claimed invention using the appellants' invention as a roadmap. Where a claimed element or limitation has not been not

been expressly or implicitly disclosed, e.g., **“providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user”** and **“wherein the plurality of cascading filters simultaneously considers content across the plurality of media,”** the Examiner merely makes a blanket statement that such limitation is “obvious to one of ordinary skill ... predictable and desirable results” without proffering any objective evidence thereof or rationale therefore.

In addition, the rule under MPEP § 707.07(g) provides for the avoidance of “Piecemeal Examination” as follows: **“Piecemeal examination should be avoided** as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, **avoiding, however, undue multiplication of references.** (See MPEP § 904.03.) ....” {Emphasis added.} In the instant case, the Examiner has used a multiplicity of references in asserting these grounds for rejection on this basis.

### **C. Conclusion as to the Issue**

Thus, the Appellants respectfully submit that Claims 1, 2, 8-12, 15, and 16 are believed to overcome these grounds for rejection. Therefore, the Appellants respectfully request that these grounds for rejection on this basis are reversed and that Claims 1, 2, 8-12, 15, and 16 are passed to allowance in due course.

## CONCLUSION

Accordingly, the Appellants respectfully submit that Claims 1, 2, 8-12, 15, and 16, as contained in Appendix "A" (Claims Appendix), are believed to be patentably distinct over the cited references and that the Claims either stand alone or fall individually. Therefore, reconsideration of the present application in light of the foregoing argument and the evidence presented in the Appendices is respectfully requested. Claims 1, 2, 8-12, 15, and 16, as either actually or constructively amended on June 26, 2009, are believed to be fully supported by the originally filed specification and are believed to be in allowable form. In view of the foregoing arguments, the Appellants respectfully request that the rejections of the pending claims are REVERSED.

Respectfully submitted,

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### VIII. Claims Appendix (Appendix A)

1. (previously presented) A method of using an interactive program guide by at least one user on a given audio/visual device, comprising the steps of:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;

5 displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;

providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;

10 detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;

when a user selects the preliminarily selected audio/visual program, automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;

15 when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the preliminarily selected audio/visual program, which second predetermined action is different than the first predetermined action;

20 when a user takes an action with respect to the preliminarily selected audio/visual program, which action does not comprise either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and

25 automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,

wherein the plurality of discrete selectable audio/visual programs are embodied in a



plurality of media,

30 wherein the plurality of cascading filters simultaneously considers content across the plurality of media,

wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,

35 wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program, and

wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items.

2. (previously presented) The method of claim 1, wherein the characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs comprise at least one of:

a programming network identifier;

5 a broadcast starting time;

a description of audio/visual content as corresponds to the audio/visual program; and

an audio/visual program media source.

Claims 3-7 (canceled):

8. (original) The method of claim 1 wherein detecting preliminary selection of a particular one of the discrete selectable audio/visual programs further comprises detecting at least a predetermined relationship between a present position of one of the characterizing descriptors as corresponds to the particular one of the discrete selectable audio/visual programs and an area of  
5 visual focus.

9. (original) The method of claim 1 and further comprising determining when the user selects the preliminarily selected audio/visual program by detecting when the user asserts a selection action at a time when a characterizing descriptor as corresponds to the preliminarily selected audio/visual program occupies, at least in part, a same portion of a display as a  
5 predetermined area of visual focus.

10. (previously presented) A method of providing an interactive programming guide, comprising the steps of:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;

5 providing an updatable list of preferred items of audio/visual content;

displaying an interactive programming guide comprising at least one of the characterizing descriptors;

providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being  
10 customizable for each at least one user;

providing an area of visual focus on a particular displayed one of the characterizing descriptors;

in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing  
15 descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;

in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;

in response to a third signal that is different from both the first signal and the second  
20 signal, displaying the updatable list of preferred items of audio/visual content; and

automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual  
25 content for greater than a predetermined length of time,

wherein the plurality of discrete selectable items of audio/visual content are embodied in a plurality of media, and

wherein the plurality of cascading filters simultaneously considers content across the plurality of media.

11. (original) The method of claim 10 wherein the response to the third signal further comprises not displaying characterizing descriptors as correspond to items of audio/visual content that are not on the list of preferred items of audio/visual content.

12. (original) The method of claim 10 further comprising:  
receiving at least one of the first signal, the second signal, and the third signal from a remote control device.

Claims 13-14 (canceled).

15. (previously presented) A method of using an interactive program guide, comprising the steps of:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs;

5 displaying an interactive program guide comprising at least one of the characterizing descriptors as corresponds to a particular one of the discrete selectable audio/visual programs;

providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being customizable for each at least one user;

10 detecting preliminary selection of a particular one of the discrete selectable audio/visual programs to provide a preliminarily selected audio/visual program;

determining when the user selects the preliminarily selected audio/visual program by detecting when the user asserts a selection action at a time when a characterizing descriptor as corresponds to the preliminarily selected audio/visual program occupies, at least in part, a same  
15 portion of a display as a predetermined area of visual focus;

when a user selects the preliminarily selected audio/visual program; automatically taking a first predetermined action with respect to the preliminarily selected audio/visual program;

when a user preliminarily selects a different one of the plurality of discrete selectable audio/visual program, automatically taking a second predetermined action with respect to the  
20 preliminarily selected audio/visual program, which second predetermined action is different than

the first predetermined action;

when a user takes an action with respect to the preliminarily selected audio/visual program, the action not comprising either selecting the preliminarily selected audio/visual program or preliminarily selecting a different audio/visual program, automatically taking a third  
25 predetermined action with respect to the preliminarily selected audio/visual program, which third predetermined action is different than the first and the second predetermined action; and

automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of audio/visual content when the area of visual focus is on a characterizing descriptor as  
30 corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,

wherein the characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs comprise at least one element selected from a group consisting essentially of a programming network identifier, a broadcast starting time, a description of  
35 audio/visual content as corresponds to the audio/visual program, and an audio/visual program media source,

wherein the plurality of discrete selectable audio/visual programs are embodied in a plurality of media,

wherein the plurality of cascading filters simultaneously considers content across the  
40 plurality of media,

wherein the step of automatically taking a first predetermined action comprises adding information regarding the preliminarily selected audio/visual program to a list of preferred items,

wherein the step of automatically taking a second predetermined action comprises moving an area of visual focus away from the preliminarily selected audio/visual program,

45 wherein the step of automatically taking a third predetermined action comprises displaying the list of preferred items, and

wherein the step of detecting preliminary selection of a particular one of the discrete selectable audio/visual programs further comprises detecting at least a predetermined relationship between a present position of one of the characterizing descriptors as corresponds to  
50 the particular one of the discrete selectable audio/visual programs and an area of visual focus.

16. (previously presented) A method of providing an interactive programming guide, comprising:

providing access to characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/visual content;

5 providing an updatable list of preferred items of audio/visual content;

displaying an interactive programming guide comprising at least one of the characterizing descriptors;

providing a plurality of cascading filters for facilitating determination of a particular one of the discrete selectable audio/visual programs, the plurality of cascading filters being  
10 customizable for each at least one user;

providing an area of visual focus on a particular displayed one of the characterizing descriptors;

in response to a first signal, adding information regarding the discrete selectable item of audio/visual content as corresponds to the particular displayed one of the characterizing  
15 descriptors as is presently in the area of visual focus to the updatable list of preferred items of audio/visual content;

in response to a second signal that is different from the first signal, moving the area of visual focus to a different one of the characterizing descriptors;

in response to a third signal that is different from both the first signal and the second  
20 signal, displaying the updatable list of preferred items of audio/visual content;

receiving at least one of the first signal, the second signal, and the third signal from a remote control device; and

automatically adding information corresponding to a particular one of the plurality of discrete selectable items of audio/visual content to the updatable list of preferred items of  
25 audio/visual content when the area of visual focus is on a characterizing descriptor as corresponds to the particular one of the plurality of discrete selectable items of audio/visual content for greater than a predetermined length of time,

wherein the response to the third signal further comprises not displaying characterizing  
30 descriptors as correspond to items of audio/visual content that are not on the list of preferred items of audio/visual content,

wherein the plurality of discrete selectable items of audio/visual content are embodied in

a plurality of media, and

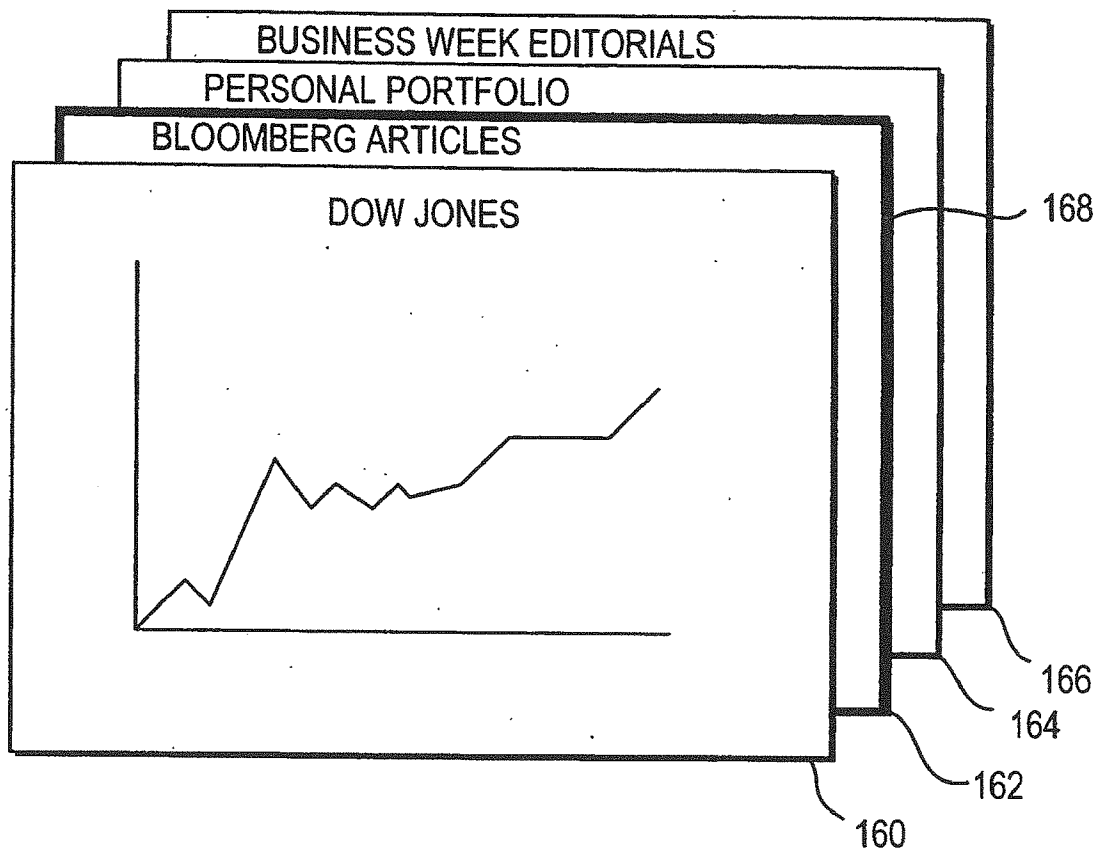
wherein the plurality of cascading filters simultaneously considers content across the plurality of media.

## **IX. Evidence Appendix (Appendix B)**

- A. Exhibit A: FIG. 18A of cited reference US 2004/0107439 to Hassell, showing cascading windows, but no actual filtration.
- B. Exhibit B: FIG. 18B of cited reference US 2004/0107439 to Hassell, showing cascading windows, but no actual filtration.
- C. Exhibit C: FIG. 24 of cited reference US 2004/0107439 to Hassell, showing multiple feeds input to a display screen, but no actual filtration.
- D. Exhibit D: FIG. 2 of present application, showing cascading filters, being smart filters having enhanced suggestion engines, which perform actual filtration and provide an automatically generated updateable list of preferred items.

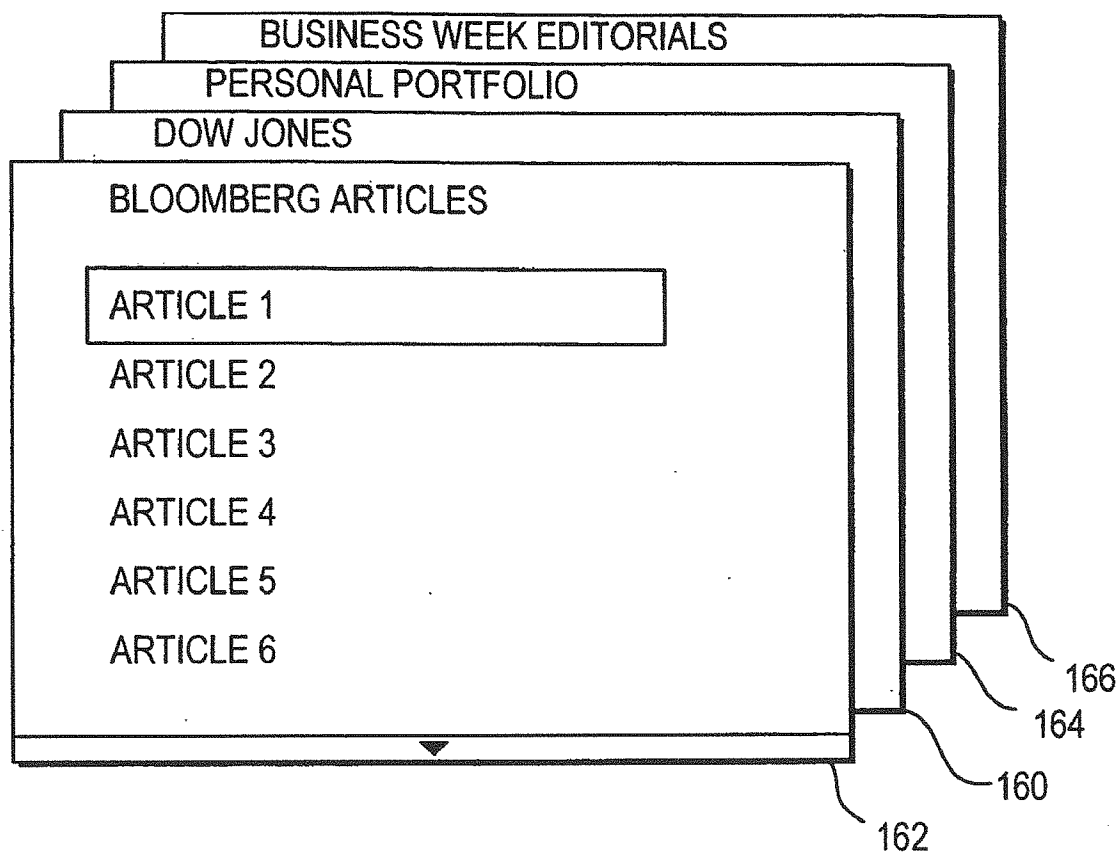
## EXHIBIT A





**FIG. 18A**

## EXHIBIT B



*FIG. 18B*

## EXHIBIT C

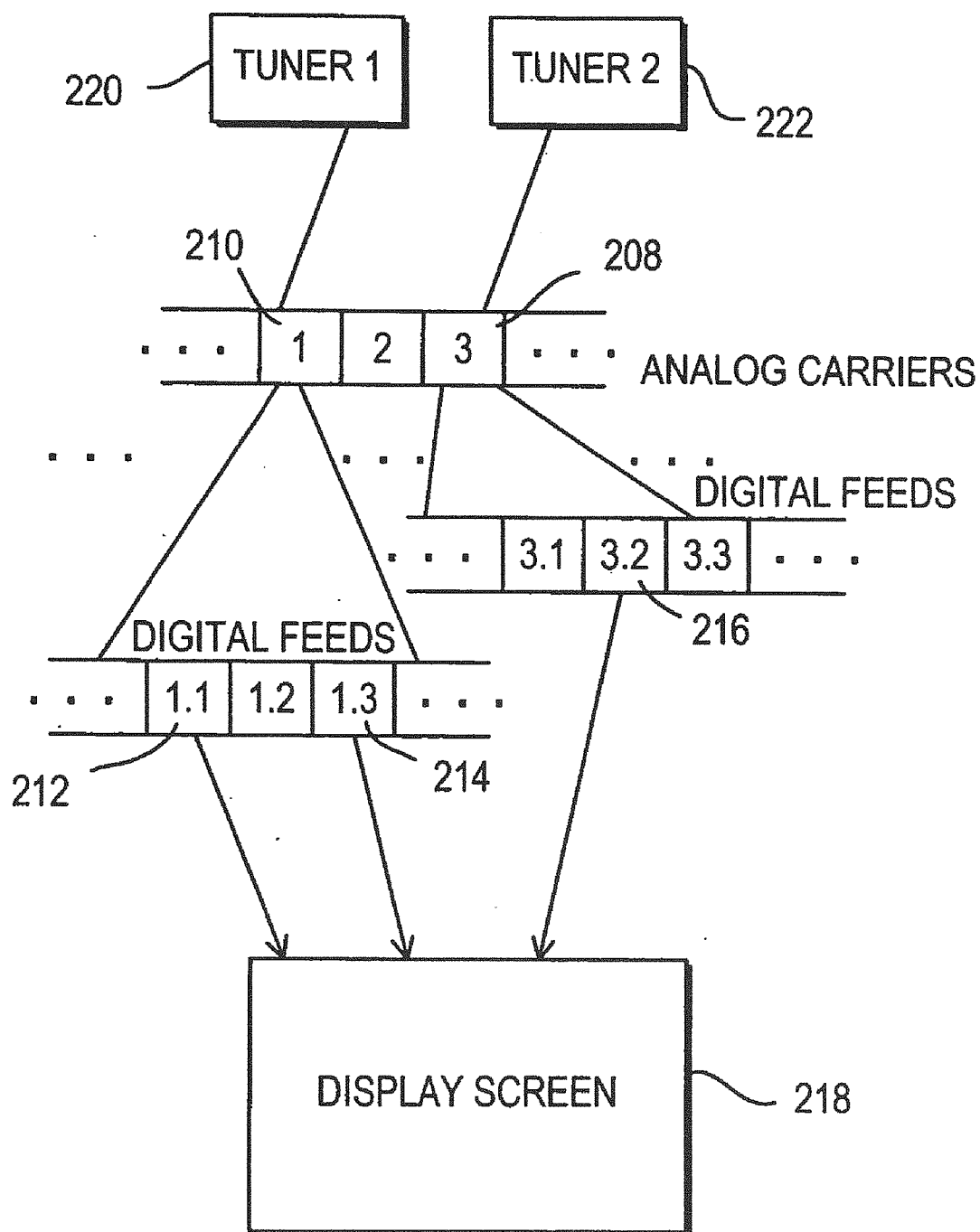


FIG. 24

## EXHIBIT D

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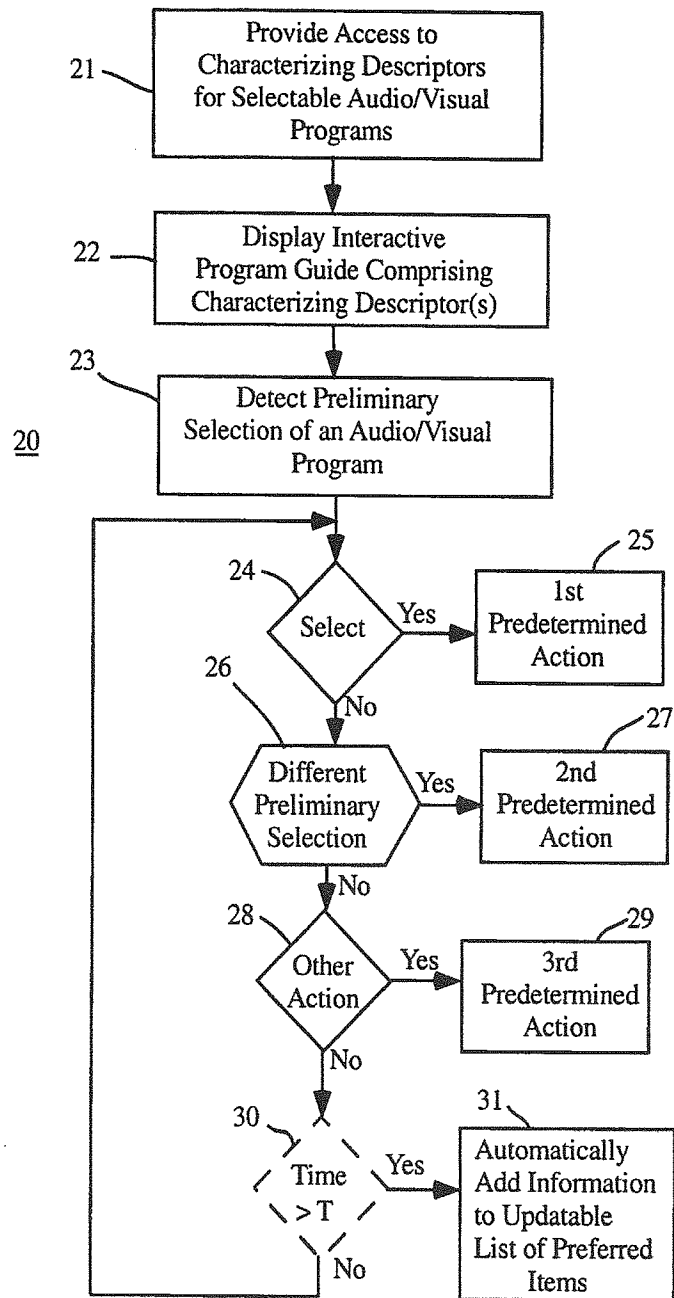


Fig. 2

## **X. Related Proceedings Appendix**

On information and belief, no decision by a court or the Board has been rendered in any related proceedings. However, the related appeal in U.S. Patent Application Serial No. 10/806,832 (Applicants: Nishikawa et al.), entitled “Filter Criteria and Results Display Apparatus and Method,” filed on July 1, 2009, is pending.